

REMARKS

This is in response to the Office Action of November 23, 2005. In that office action, claims 37-41 were rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in a way as to reasonably convey to one of skill in the art that the inventors had possession of the claimed invention at the time the application was filed.

Claims 37-43 were also rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

Claims 37-41 were rejected under 35 U.S.C. 102(b) and 35 U.S.C. 103 as being unpatentable over U.S. Patent Number 5,250,303 to Meryman et al.

In addition, the specification was objected to for containing certain informalities. Also, certain references in the information disclosure statement were not considered on the grounds that the citation contained in PTO Form 1449 was incomplete.

By this Amendment, Applicants have amended claims 37 and 40 and have cancelled claim 41. With the amendments to claims 37 and 40, Applicants respectfully submit that the rejections under 35 U.S.C. 112, first paragraph, and 35 U.S.C. 112, second paragraph, have been addressed. Specifically, Applicants have amended claim 37 to remove the word "concentrated" preceding the word "red blood cells" and have amended the claim to recite a solution that "does not include sodium chloride." Claim 40 has been amended to remove the process language objected to by the Examiner. Claim 41 has been cancelled.

Turning now to the rejections under 35 U.S.C. 102 and 35 U.S.C. 103 based on the '303 patent to Meryman, Applicants respectfully traverse the Examiner's rejections. With respect to the rejection under 35 U.S.C. 102, the Office has cited the ARC30 solution shown in table 2 of the '303 Meryman reference as anticipating the solution recited in claim 37. Recognizing that the ARC30 solution includes only 0.01 mM of adenine, the Office concludes that use of the term "about 1.2 - 1.7 mM adenine" as recited in claim 37 "may be argued to permit inclusion of 0.01 mM adenine" ('Office Action, page 5').

Applicants respectfully submit that the position of the Office that 0.01mM is "about" 1.2 – 1.7 mM adenine is an overly expansive reading of the term of the word "about." The adenine concentration in the ARC30 solution is over 100 times less than the adenine concentration recited in claim 37. Applicants respectfully submit that such a broad interpretation of the word "about" contradicts a reasonable reading of that word, particularly as used in the context of the present application or, for that matter, the '303 Meryman patent. Meryman himself refers to concentrations that are only 10 times less than the concentration in ARC8 as a "low adenine concentration." (Col. 13, Example 13). Thus, clearly Meryman draws a distinction between a low adenine concentration of 0.1mM and a concentration more comparable to that recited in claim 37. For this reason, Applicants respectfully submit that the claims of the present application are not anticipated by the ARC30 solution described in the '303 Meryman patent.

With respect to the rejection of the 35 U.S.C. 103, it is again the position of the Office that although the "specifically exemplified ARC30 has only 0.01 mM adenine, use of the terms 'approximately' which lack definition in the specification permits application

of the reference.” The Office continues that “adenine is shown to be present in similar solutions in concentrations of 2 mM.” According to the Patent Office, the ‘303 Meryman patent discloses compositions comprising red cells suspended in a solution containing: 50-139 mM dextrose, 0.01 – 2 mM adenine, 22 – 33 mM sodium citrate, 2.5 – 2.9 mM sodium dihydrogen phosphate, 10.6 – 12 mM sodium phosphate dibasic and a pH of 7.4 – 7.5 and an osmolarity around 200 mOsm, as exemplified in Table 2, ARC8, ARC27 and ARC 30.

Applicants note that the concentration ranges recited above do not represent the concentrations of any one given solution disclosed in the ‘303 Meryman patent. Instead, the ranges provided above are the result of combining three separate storage solutions described in the ‘303 Meryman patent, including a solution (e.g., ARC30) with a significantly different adenine concentration and components not included in the other solutions ARC8 and ARC27 (e.g., mannitol). Applicants respectfully take issue with the hypothetical solution approach adopted by the Patent Office. Meryman provides examples of five distinct solutions with different concentrations of different components, purportedly for different reasons. For example, Meryman describes a solution where the concentration of adenine is minimal and approaches 0. Meryman’s purpose is to show that red cells can be stored in a solution that is virtually free of adenine or includes very little adenine. This is in contrast to Meryman’s other solutions where, in fact, the concentration of adenine is significantly higher.

As stated above, Meryman uses low concentrations of adenine for a specific reason. Moreover, in the example where the concentration of adenine is low, Meryman includes mannitol as part of the solution formulation. This is in contrast to the other

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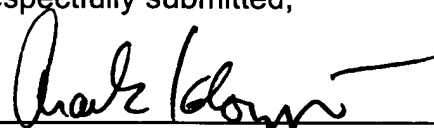
solutions where adenine is used in significantly higher concentrations, but mannitol is not included (e.g., ARC8, ARC9C, ARC32 and ARC27). Simply stated, to pick and choose from among the various concentrations of the various solutions in order to come up with a solution that meets Applicants' claims appears to be the result of impermissible hindsight. For this reason, Applicants respectfully submit that the subject matter of claim 37 and its dependent claims would not have been obvious in view of the '303 Meryman patent.

With respect to the objections to the specification, Applicants have amended the first paragraph of the application to indicate that the referenced application has now been abandoned. With respect to the references cited in the Information Disclosure statement but not considered, Applicants are attempting to verify the complete and correct citations for the objected to citations and will provide those shortly.

Finally, Applicants wish to call to the Examiner's attention co-pending U.S. Application No. 10/366,806, filed February 14, 2003. This application is pending before the present Examiner and a copy of the pending claims, as recently amended, are included in the attached Appendix.

For the reasons set forth above, Applicants submit that the claims are now in condition for allowance. Reconsideration and allowance of such claims are respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew G. Kolomayets", written over a horizontal line.

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